Supreme Court of Illinois

No. 98719

THE PEOPLE OF THE STATE OF ILLINOIS, Appellant, v.
MICHELLE L. BARTELS, Appellee.

October 6, 2004

Disposition of Petitions for Leave to Appeal

Denied.

No. 3–03–0565

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT
A.D., 2004

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the 13th Judicial Circuit,
Plaintiff-Appellant,	)	Grundy County, Illinois
v.	)	No. 02 CF 86-2
MICHELLE L. BARTELS,	)	Honorable Robert C. Marsaglia,
Defendant-Appellee.	)	Judge Presiding

ORDER "Not To Be Published"
[May 27, 2004]

The defendant, Michelle L. Bartels, was charged with unlawful possession of a controlled substance with intent to deliver (720 ILCS 570/401(a)(2)(A) (West 2002)) and unlawful possession of a controlled substance (cocaine and heroin) (720 ILCS 570/402(a)(2)(A), 402(c) (West 2002)). She filed a motion to quash the arrest and suppress the evidence alleging that the search of the vehicle was unlawful. The trial court granted the motion, and the State appeals. We affirm.

I. FACTS

At the hearing, Illinois State Police Officer Brad Sprague testified that on June 21, 2002, at approximately 9 p.m., he was controlling traffic for an accident that had occurred on Interstate 80. A Chevrolet Suburban approached the scene. As the vehicle passed Officer Sprague, the driver honked and indicated that his vehicle had just been struck by the defendant's car, a Cavalier. Officer Sprague did not instruct either vehicle to stop.

Approximately one-quarter mile down the interstate, both vehicles pulled over to the shoulder. Officer Sprague left his position and drove to the scene. He stopped his vehicle, activated the emergency lights and exited the car. Sprague testified that at that point, no one was free to leave until he completed his investigation of the accident. As he approached the Cavalier, he noticed that the defendant was seated in the driver's seat and Zaloudek was sitting in the passenger's seat. Sprague testified that when the Cavalier passed him on the interstate Zaloudek was driving.

After asking Zaloudek to exit the car, Sprague asked why he had switched seats with the defendant. Zaloudek initially denied switching but then admitted that he had driving the Cavalier when the accident occurred. Officer Sprague asked Zaloudek if he had a driver's license. He replied that he did not. When asked if it had been suspended or revoked, Zaloudek replied that it had been revoked. Sprague asked for another form of identification. Zaloudek said that it was in the defendant's purse. Officer Sprague told Zaloudek he was going to be arrested for driving on a revoked license and asked him to sit down while he tried to verify his identification information.

Officer Sprague approached the driver's side of the vehicle and told the defendant that he needed to see Zaloudek's identification. The defendant looked in her purse but could not find it. Spargue testified that the defendant was acting "ex-

tremely nervous." Sprague asked for permission to look inside the purse, and the defendant agreed. Sprague did not find Zaloudek's identification. Sprague testified that at that point he believed he was dealing with something more than just a traffic accident. He asked the defendant if there was anything illegal in the car. She responded, "No." Sprague asked the defendant who was driving the vehicle when the accident occurred. The defendant stated that Zaloudek was driving the car. Sprague then asked for and received consent to search the vehicle. Sprague testified that he asked for consent because (1) the defendant and Zaloudek had switched positions, (2) Zaloudek was driving on a revoked license and was unable to produce an alternative form of identification, and (3) the defendant was nervous.

At that point, the officer received a call from dispatch requesting his status. State Police Officer Chad Brody had arrived at the scene earlier with his trained canine. Sprague was uncertain when Brody had arrived and testified that he had not called for backup or the dog. Officer Sprague returned to his squad car and instructed Brody to watch Zaloudek.

Brody testified that he was not involved in Sprague's investigation of the incident. He was there for safety purposes only and was instructed to stay with Zaloudek. After Sprague returned to his car, Brody approached the Cavalier and asked the defendant why she had moved into the driver's seat. While talking to the defendant, he used a flashlight to search the interior of the vehicle and found no contraband in plain view. The defendant indicated to Brody that she had rented the Cavalier. Brody asked for the rental agreement. The defendant looked in the glove compartment but could not find it. She then looked around inside the vehicle and informed the officer that she must have left it at home. Officer Brody asked her to look in the center console. The defendant did not respond and her hands began to shake. Brody testified that based on her nervous

behavior and her refusal to look in the console, he believed there were drugs in the console. He asked if there was anything in the car that he should know about. The defendant replied, "No." He then asked for and received permission to search the vehicle. The canine indicated for the presence of drugs, and the officers recovered cocaine and heroin in the console.

The defendant testified that she was asleep when Zaloudek hit the Suburban. She admitted that he was driving the rental car with her permission and that she knew he was unauthorized to drive. She testified that, upon Sprague's request, she looked in her purse for Zaloudek's identification but found nothing. She gave Officer Sprague permission to look as well. After Sprague left, another officer approached the vehicle and asked to whom the car belonged. She said that she had rented the car. The officer asked for the rental agreement, but she could not find it. He then asked her to look in the console. She declined and told him that she knew she had left the papers at home. Brody told her that if she did not look in the console, "he was going to go get his dog." She replied, "Go ahead, do whatever." She testified that neither officer asked for consent or permission to search the vehicle.

The trial court granted the defendant's motion. The court concluded that the officers' questions were not supported by any independent reasonable and articulable suspicion, and that any drug suspicion was not reasonably related to their initial contact with the defendant.

II. ANALYSIS

On appeal, the State argues that the trial court erred in quashing the arrest and suppressing the evidence. The State first argues that Officer Sprague did not "stop" the defendant within the meaning of the fourth amendment. Therefore, the State contends the constitutional rules did not apply to the encounter. In the alternative, the State maintains that the

officers' questions did not violate the defendant's fourth amendment rights because the officers had a reasonable, articulable suspicion of criminal activity.

The ruling of a trial court on a motion to quash arrest and suppress evidence frequently presents mixed questions of fact and of law. Because the trier of fact is in the best position to review the evidence and weigh the credibility of the witnesses, the findings of fact of the trial court will not be disturbed unless they are manifestly erroneous. *People v. Simac*, 321 Ill. App. 3d 1001, 748 N.E.2d 798 (2001). However, on questions of law, the finding of the trial court is subject to *de novo* review. *Simac*, 321 Ill. App. 3d 1001, 748 N.E.2d 798.

A. The Stop

The State argues that the encounter between the defendant and Sprague was not a stop but was instead a voluntary encounter that fell within the officer's community caretaking function. We reject the State's contention.

There are three recognized tiers of the police-citizen encounters: (1) an arrest; (2) a *Terry* stop; and (3) a "community caretaking" function. *People v. Murray*, 137 Ill. 2d 382, 560 N.E.2d 309 (1990). An arrest and a *Terry* stop must survive fourth amendment scrutiny. *Murray*, 137 Ill. 2d 382, 560 N.E.2d 309. Thus, the police may question a citizen without triggering fourth amendment protections during a community caretaking encounter, so long as the officer does not convey by use of force or a show of authority that compliance with his inquiry is required. *Florida v. Bostick*, 501 U.S. 429, 115 L. Ed. 2d 389, 111 S. Ct. 2382 (1991). This function is totally divorced from the detection or investigation of evidence of a violation of a criminal statute. *City of Highland Park v. Lee*, 291 Ill. App. 3d 48, 683 N.E.2d 962 (1997); see also *People v. Harris*, 207 Ill. 2d 515, 802 N.E.2d 219 (2003). A person is seized within the meaning of the fourth amendment if,

in view of all the circumstances, a reasonable person in his position would not believe that he is free to leave. *People v. Brownlee*, 186 Ill. 2d 501, 713 N.E.2d 556 (1999).

Here, Zaloudek pulled the Cavalier over after the driver of the vehicle he hit informed Officer Sprague that an accident had occurred. Officer Sprague arrived at the scene moments later, activated his lights, and exited his vehicle. His purpose for the stop was to investigate an accident and complete an accident report. Officer Sprague testified that once he began his investigation, no one was free to leave. Zaloudek was asked to step out of the car and was told to sit down while Officer Sprague spoke to the defendant. Officer Brody and his trained canine were also present. Certainly, a reasonable person in the defendant's position would not have felt free to leave. The defendant was detained and her compliance was compelled. Therefore, Officer Sprague's encounter with the defendant does not qualify as "community caretaking."

B. Search of the Vehicle

Next, the State insists that even if we conclude a "stop" occurred, the officers' questions did not violate the defendant's fourth amendment rights because the officers had a reasonable, articulable suspicion of criminal activity. We conclude that the officers' questions impermissibly expanded the scope of the traffic stop.

The fourth amendment of the United States Constitution guarantees the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const., amend. IV. This provision applies to all seizures of the persons, including those of only a brief detention short of an arrest. *United States v. Brignoni-Ponce*, 442 U.S. 873, 45 L. Ed. 2d 607, 95 S. Ct. 2574 (1975). Routine traffic stops fall within that category. *People v. Gonzalez*, 204 Ill. 2d 220, 789 N.E.2d 260 (2003).

Based on their brevity, traffic stops are analyzed by applying the rule set forth in *Terry v. Ohio*, 392 U.S. 1, 20 L. Ed. 2d 889, 88 S. Ct. 1868 (1968). Under *Terry*, a police officer may briefly detain a person for questioning if the officer reasonable believes that the person has committed, or is about to commit, a crime. The reasonableness of the officer's actions involves a two-part inquiry: (1) whether the stop was justified at its inception; and (2) whether it was reasonably related in scope to the circumstances which justified the interference in the first place. *Gonzalez*, 204 Ill. 2d 220, 789 N.E.2d 260 (citing *Terry*, 392 U.S. 1, 20 L. Ed. 2d 889, 88 S. Ct. 1868).

In *Gonzalez*, the Illinois Supreme Court developed a three-tiered test for determining whether police questioning during a traffic stop satisfies the *Terry* scope requirement. First, no fourth amendment violation occurs if the question is reasonably related to the purpose of the stop. However, if the question is not reasonably related, the officer must then have had a reasonable, articulable suspicion that would justify the question. If he had a reasonable, articulable suspicion, no constitutional violation occurred. If he did not, the final consideration is whether the inquiry impermissibly prolonged the detention or changed the nature of the stop. If the inquiry did, the officer's actions violated the defendant's fourth amendment rights. If the inquiry did not, no fourth amendment violation occurred. *Gonzalez*, 204 Ill. 2d 220, 789 N.E.2d 260.

In this case, the stop was clearly justified at its inception. Officer Sprague's initial purpose for the stop was to investigate a minor traffic accident. Sprague questioned Zaloudek regarding the status of his driver's license and searched the defendant's purse for Zaloudek's identification. However, he then launched a broad inquiry into the contents of the vehicle which had no direct relation to the initial justification for the stop.

Under *Gonzalez*, an investigatory inquiry does not violate the defendant's fourth amendment rights if the officer has a

reasonable, articulable suspicion of criminal activity. *Gonzalez*, 204 Ill. 2d 220, 789 N.E.2d 260. Here, Sprague had no reasonable, articulable suspicion of illegal drug use or the possession of drugs. Sprague testified that the defendant was nervous and his suspicions were aroused because the defendant had switched seats with the passenger. However, Zaloudek had just informed Officer Sprague that he had been driving the vehicle when the accident occurred and that his license was revoked. Sprague's unparticularized suspicion that the vehicle contained and illegal substance is not enough to justify broadening the scope of the stop into a drug investigation. See *People v. Thomas*, 198 Ill. 2d 103, 759 N.E.2d 899 (2001) (mere hunches or unparticularized suspicious are not enough to justify broadening a stop into an investigatory detention). Given the circumstances, the defendant's conduct did not create a reasonable, articulate suspicion that the vehicle contained contraband.

In the absence of a reasonable, articulate suspicion, we must consider whether Officer Sprague's questions impermissibly prolonged the detention or changed the fundamental nature of the stop. We determine that they did. Regardless of the length of the detention, asking the defendant if she had anything illegal in the car went well beyond the initial purpose of Sprague's investigation.

Under the unusual circumstances of this case, our analysis does not end with Officer Sprague. Because the investigation was still in progress and had yet to be completed, we must apply the *Gonzalez* test to Officer Brody's questions as well. As previously stated, the investigation was justified at its inception. The questions we must answer are: (1) whether Brody had a reasonable, articulable suspicion of criminal activity, and, if not, (2) whether his inquiry impermissibly prolonged the detention or changed the fundament nature of the stop.

We first concluded that Brody had no reasonable, articulable suspicion that drugs were in the vehicle. The record demonstrates that when Officer Sprague returned to his squad car, he specifically instructed Brody to stay with Zaloudek. He did not. Instead, he proceeded to question the defendant without any specific knowledge of Sprague's investigation. Brody testified that the defendant was nervous and shaky, was unable to produce the vehicle's rental agreement, and refused to look in the console. However, these factors do not give rise to a reasonable suspicion that the vehicle contained drugs. *People v. Penny*, 188 Ill. App. 3d 499, 544 N.E.2d 1015 (1989) (nervousness and shaking hands are generally not characteristics that invoke reasonable suspicion, particularly when one is detained by a police officer); *People v. Sinclair*, 281 Ill. App. 3d 131, 666 N.E.2d 1221 (1996) and *Nebraska v. McGinnis*, 8 Neb. App. 1014, 608 N.W.2d 605 (2000) (exercising one's right to decline permission to search cannot be used to support reasonable suspicion or probable cause). Brody testified that during his conversation with the defendant, he found no contraband in plain view of the interior of the vehicle. Further, the record does not indicate that he smelled drugs, noticed drug paraphernalia, or observed any unusual drug-related behavior by the defendant. Based on his observations, Officer Brody had no reasonable, articulable suspicion to justify a search of the vehicle.

Finally, we must consider whether Brody's inquiry impermissibly extended the duration of the stop or changed its fundamental nature. See *Gonzalez*, 204 Ill. 2d 220, 789 N.E.2d 260. Contrary to the simple request for identification in *Gonzalez*, Officer Brody's question expanded the scope of this investigation well beyond the initial purpose of the stop. As the State notes, the whole purpose of the stop was to investigate a traffic accident and complete an accident report. Questioning the defendant as to the vehicle's contents and her possession of contraband had no correlation to the traffic accident. Further,

Officer Brody's continued questioning and his threats of a canine search increased the confrontational tenor of the stop and significantly changed the nature of the investigation. See *People v. Leigh*, 341 Ill. App. 3d 492, 792 N.E.2d 809 (2003) (asking defendant if vehicle contained anything that dog would alert to increased confrontational nature of stop). Accordingly, the trial court did not err in granting the defendant's motion to quash the arrest and suppress the evidence.

III. CONCLUSION

The judgment of the circuit court of Grundy County is affirmed.

Affirmed.

O'BRIEN, J. with LYTTON, J., concurring. SCHMIDT, J., dissenting.

JUSTICE SCHMIDT, dissenting:

I dissent.

In reaching its conclusion, the majority attempts to classify this encounter as a routine traffic stop, which it clearly was not. The majority's reliance on *Gonzalez* is misplaced. It was not the police who expanded the nature of this encounter, it was the defendant and her passenger. From the moment that Trooper Sprague arrived on the scene and realized that the driver and passenger had switched positions, this was no longer a routine traffic accident investigation.

To begin with, Zaloudek says that he and defendant switched seats because Zaloudek did not have a valid driver's license and therefore did not want to be arrested for that charge. That is certainly one reason to switch seats and avoid a police

encounter. There is a laundry list of other potential reasons to avoid a police encounter such as being wanted on arrest warrants for everything from domestic battery to murder or kidnaping. The majority concludes that once Zaloudek gave a plausible answer for his switching seats, the police were obligated to accept it and to stop any additional investigation. I disagree. Even assuming that Zaloudek's explanation was the correct one, I believe that from the very outset, the police had probable cause to arrest Zaloudek and defendant for obstructing justice. 760 ILCS 5/31 -- 4 (a) (West 2000). Clearly, the defendant participated in switching seats to help Zaloudek avoid arrest and prosecution.

Zaloudek had no identification on his person. He told Trooper Sprague it was in the defendant's purse. It was not. When asked about the co-defendant's identification, defendant Bartels was acting "real nervous." At that time, Trooper Sprague believed that he had "something more than an accident" and that Zaloudek had not given his correct name.

At the time of the search of this car, Zaloudek had produced no identification. Defendant agreed to look in her purse, glove box and about the car, but refused to look in the console to look for either Zaloudek's identification or papers related to the rental of the vehicle.

Under the circumstances, police officers had a reasonable, articulable suspicion of criminal activity. In my opinion, especially in light of the fact that Zaloudek had not yet been identified, the switching of the seats and the unusual behavior by defendant Bartels, a search of the car incidence to the arrest was reasonable, if only to look for the identification which Zaloudek said defendant possessed. Additionally, defendant said the rental papers for the car were in the car and looked about the car and the glove box; when they weren't there, she changed her mind and said the papers must be at home, and refused to look any further in the car, including the console

which was right next to her. However, most importantly, defendant consented to the search.

The majority draws a conclusion that somehow this was a drug investigation which originated from a routine traffic stop without any reasonable suspicion. While ultimately drugs were found, this was not a drug investigation, but rather a reasonable investigation based on the illegal conduct and deceptive behavior of the two occupants of a vehicle. The majority focuses on defendant's nervous behavior and ignores that totality of the circumstances. Would the ruling be the same had a body been found in the back of the vehicle?

The effect of the majority decision is that the police now have to accept any explanation for criminal conduct which might sound plausible to a judge. There were many unanswered questions. Unlike the majority, I find no constitutional barrier to the police asking legitimate questions under the circumstances that existed here.

In conclusion, if the scope of this stop was expanded, it was expanded, not by the police, but by the occupants of the vehicle. The police investigation and search were entirely reasonable under the circumstances. This would be true even without consent by defendant. Defendant's consent to the search was valid. "The Fourth Amendment proscribes unreasonable searches and seizures; it does not proscribe voluntary cooperation." *Florida v. Bostick*, 501 U.S. 429, 439 115 L. Ed. 389, 401, 111 S. Ct. 2382, 2389 (1991). The defendant had already consented to a police search of the vehicle before Trooper Brody asked his first question.

This case would have been a lot simpler had the troopers simply informed the defendant that she was under arrest for obstructing justice. There was clearly probable cause to do so. Then the police could have performed an inventory search of the vehicle subject to the arrest of the original driver, Zaloudek.

Remember, although Bartels switched seats, she never established that she was actually the person who rented the vehicle and had the right to possess it. In short, there are numerous theories under which the search was proper, not the least of which is consent.

I would reverse the judgment of the trial court.